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WRITER'S DIRECT DIAL

October 8, 2003

EX PARTE NOTICE

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Docket 98-67

Dear Madame Secretary:

On October 7, 2003, the undersigned, Ronald E. Obray, President of Hands On Video Relay Service, Inc. ("HOVRS"), and Andy Lange, Vice President and Chief Operating Officer of HOVRS, and Nicola E. Sanchez, a legal extern with this firm, met with K. Dane Snowden, Chief, Consumer and Governmental Affairs Bureau, Margaret Egler, Deputy Chief, Consumer & Governmental Affairs Bureau, Amy Brown, legal advisor, Consumer & Governmental Affairs Bureau, and Thomas Chandler, Chief, Disability Rights Office of the Consumer & Governmental Affairs Bureau.

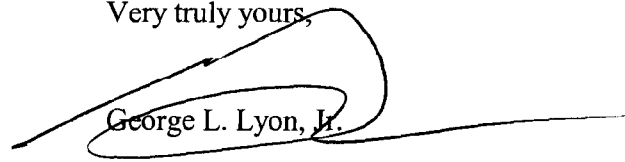
The subject of the discussion was the hardship that the interim Video Relay Service rate is having on the VRS industry, on the service provided the deaf and hard of hearing community, and the need for an expeditious resolution of the final VRS rate for 2003-04.

Copies of HOVRS's petition for reconsideration of the order setting the interim VRS rate, HOVRS's confidential supplement thereto, and a power-point presentation were distributed to those present. A copy of the power-point presentation is attached hereto. Deletions of confidential data have been made.

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Should any questions arise concerning this matter, kindly contact this office.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a horizontal line extending to the right. The signature is written over the printed name 'George L. Lyon, Jr.'.

George L. Lyon, Jr.

cc: K. Dane Snowden
Thomas Chandler, Esq.
Margaret Egler, Esquire
Amy Brown, Esquire

HOVRS meeting with K. Dane Snowden, October 7, 2003

- Present for HOVRS, President Ronald E. Obray.
- Vice President for Marketing and COO Andy Lange, also President of the National Association for the Deaf.
- HOVRS legal counsel, George L. Lyon, Jr.

About HOVRS

- Contract supplier of VRS to AT&T and MCI.
- Spent more than two years in research and development of VRS platform.
- Commenced operation in August of 2002 to beta test group.
- Commenced operation under AT&T contract in December of 2002.
- Deleted confidential data.

Importance of VRS to the deaf and hard of hearing community

- Patricia Hughes, CEO of Glad: “I have seen how invaluable VRS is to us ... I personally and professionally rely on VRS....”
- Iowa Utilities Board: “How important is VRS? Several members of the DPRC ... have told us they strongly prefer VRS because it allows them to communicate in their own language. VRS provides ... the closest functional equivalence that is technically possible at this time.”

Hands On Video Relay Service discussion of interim VRS rate

- Basis for FCC's in depth examination of VRS rate was mistaken.
- Interim rate was imposed with no notice or comment.
- Legal basis for CGB's right to impose an interim rate is questionable.
- Adjustments made in prescribing the interim rate are unknown and unexplained.

Hands On Video Relay Service discussion of interim VRS rate

- Adjustments to HOVRS's data were not justified.
- Interim rate is causing unjustified hardship to HOVRS, other providers and the deaf and hard of hearing public.
- HOVRS has submitted revised cost data justifying its expenses.
- A final VRS rate needs to be set with expedition.

***The FCC's in-depth
examination of the VRS rate
was based on mistaken premises***

- Concerns regarding the high cost of VRS prompted in-depth review of provider's projected costs. The FCC was right to be concerned with the high cost.
- NECA proposed a decrease for VRS compensation from \$17.04 a minute to \$14.023, however.
- Little VRS was ever provided at lower rates, none until the rate was \$9.614 in 2001-02.

***The FCC's in-depth
examination of the VRS rate
was based on mistaken premises***

- Previous VRS had been offered via ISDN lines requiring users to go to specified locations to make use of the service.
- Current VRS is offered on demand to users employing high speed Internet access.
- Thus it was a mistake to compare the previous \$17 VRS rate to the rates existing when VRS was originally developed.

***The FCC's comparison of VRS
with Video Remote Interpreting
was also fallacious***

- Comparison with VRI rates was inapposite. See Attachment for detailed explanation.
- VRS is an on demand service; VRI is scheduled.
- VRS is moving toward 24/7 service, VRI is offered only during business hours.
- VRS required complicated networking and software; VRI does not.

***The FCC's comparison of VRS
with Video Remote Interpreting
was also fallacious***

- VRS has substantial regulatory and compliance costs, including complaint reporting; VRI does not.
- VRS must configure its network and personnel for peak volume; VRI does not.
- VRS must perform R&D to meet currently waived requirements; VRI does not.

The Bureau imposed the interim VRS rate without adequate notice or comment

- Although comments were accepted on the NECA proposed VRS rate, no notice was given that the FCC intended to lower the VRS rate.
- No party suggested lowering the rate.
- The interim rate was released with one day's notice before it became effective.
- The rate was a shock for all providers.

***The legal basis for the CGB to
impose an interim rate is
questionable.***

- CGB has no delegated rate making authority, much less the authority to impose interim rates. *See* 47 C.F.R. Sec. 0.141.
- Since the Bureau admitted that novel questions were presented with respect to the VRS rate, 47 C.F.R. Sec. 0.361 denies the Bureau authority to act on the VRS rate issue.

***Adjustments made in
prescribing the interim rate are
unknown and unexplained.***

- The Bureau's method of calculating the interim rate is unknown and unexplained.
- The explanation given is in very general terms and is not susceptible to verification and correction from review of the record.
- The confidential nature of the submissions made to the Bureau are an insufficient reason for its unexplained interim rate. The Bureau could have provided its calculations and adjustments without disclosing from whom the data were obtained.

Adjustments to HOVRS's data were not justified

- The Bureau reduced HOVRS's video interpreter ("VI") expenses in 2003 while acknowledging that HOVRS substantially underestimated its VI costs for 2004.
- The Bureau reduced HOVRS's engineering expenses based on the arbitrary reason they were more than the other VRS providers without analyzing whether HOVRS's proposed engineering expenses are justified.

Adjustments to HOVRS's data were not justified

- The Bureau arbitrarily imposed a 11.25 percent rate of return on investment only in calculating the interim VRS rate.
- The rate of return figure chosen was inappropriate since it was appropriated from a prior proceeding involving LEC interstate access, not from an examination of VRS provider's capital requirements.

Adjustments to HOVRS's data were not justified

- The 11.25 percent rate of return figure was developed for some of the larger companies in the country and has no relation to the capital structure of VRS providers in a start-up industry.
- Rate of return methodology is appropriate only for monopoly capital intensive industries; VRS is a competitive labor intensive service.

Adjustments to HOVRS's data were not justified

- The Bureau should have allowed a profit margin of 10-15 percent of justified costs.
- A margin based on percentage of costs derives support from the government contracts analogy.

***The interim rate is causing
unjustified hardship to the deaf
and hard of hearing community***

- VRS providers have cut-back hours of operation and reduced service.
- CSD/Sprint has abandoned 24/7 operation and laid off VIs.
- Sorenson and CSD have advised users to expect significant wait times.
- HOVRS has laid off VIs, and is experiencing substantial wait times.

***The interim rate is causing
unjustified hardship to the deaf
and hard of hearing community***

- Average wait time to place a call has increased on HOVRS's network [remainder of discussion deleted as confidential].
- The FCC standard for wait time for TRS is 85 percent of calls placed within 10 seconds.
- HOVRS's dropped calls increased from June to September [remainder of discussion deleted as confidential].

***The interim rate is causing
unjustified hardship to HOVRS***

- Discussion deleted as confidential.

***The interim rate is causing
unjustified hardship to HOVRS***

- Discussion deleted as confidential.

***The interim rate is causing
unjustified hardship to HOVRS***

- Discussion deleted as confidential.

***The interim rate is causing
unjustified hardship to HOVRS***

- Discussion deleted as confidential.
- The inadequate VRS rate is denying deaf and hard of hearing persons service comparable to that offered hearing persons.

The interim rate is causing unjustified hardship to HOVRS

- HOVRS cannot adequately staff under the interim rate.
- HOVRS has urgent needs to hire [discussion deleted as confidential]. This cannot be done under the existing inadequate interim VRS rate.

HOVRS submitted revised data justifying its projected costs.

- HOVRS submitted a traffic study based on the Erlang C trunking methodology demonstrating that its 2003 VI costs were accurate and showing that its originally projected 2004 VI costs were substantially understated as the Bureau advised.
- HOVRS submitted fully revised expense estimates reducing certain proposed costs which the Bureau had not even questioned.

HOVRS submitted revised data justifying its projected

- Discussion deleted as confidential.
- HOVRS's revised data were based on actual operating results for the first six months of 2003.

***It is critical that the FCC resolve
the matter of the final 2003-
04 VRS rate with expedition***

- HOVRS cannot keep overworking its staff
[remaining discussion deleted as
confidential].
- Needed improvements in video quality
cannot be made under the interim rate.
- [Discussion deleted as confidential].

***It is critical that the FCC resolve
the matter of the final 2003-
04 VRS rate with expedition***

- [Discussion deleted as confidential].
- Users of VRS are experiencing unsatisfactory service under the interim rate. *See* Public Comments in Docket 98-67.
- HOVRS and other providers cannot conduct needed R&D to meet currently waived standards without a compensable VRS rate.

HOVRS is asking

- That the Bureau immediately reinstate the NECA recommended rate of \$14.023.
- Alternatively that the Bureau publish its order resolving the final 2003-04 VRS rate within 30 days.
- That the final rate be made retroactive to cover costs incurred to date.

Requirements for Providing Service:

A comparison of Video Relay Service and Video Remote Interpreting Hands On Video Relay Services, Inc.

Definition of terms:

Video Relay Service (VRS): A public, on-demand telecommunication service regulated under the FCC's TRS program that provides Deaf and Hard of Hearing persons with access to communication over standard phone lines.

Video Remote Interpreting (VRI): A fee-for-service form of interpreting which allows consumers to schedule interpreters via a point-to-point videoconference instead of having a live, on-site interpreter.

Requirement	VRS	VRI	Comment
DS 3 Internet Connections 47 C.F.R. § 64.604(b)(2)	Yes	No	VRS required to accommodate many simultaneous calls. VRI can operate on one ISDN or T-1, or high-speed access line.
Local Area Network Required 47 C.F.R. § 64.604(b)(2)	Yes	No	All VRS stations are connected to the network to handle multiple calls.
Redundant Networks 47 C.F.R. § 64.604(b)(4)	Yes	No	Per FCC TRS regulations, service must be provided even in the event of emergencies or disasters.
Firewall Technology 47 C.F.R. § 64.604(a)(2)(i)	Yes	No	VRI is "point-to-point." VRS must deal with firewall issues on the customers' end. VRS must guarantee the confidentiality of calls, requiring heavy-duty firewall protection.
Network Engineer 47 C.F.R. § 64.604(a)(2)(i)	Yes	Limited	VRS requires high-level engineers for integration with Telecom's platforms and guaranteed service despite emergencies or disasters. VRI can operate with technician-level personnel.
Extensive Hardware Investment 47 C.F.R. § 64.604(b)(2)	Yes	No	VRS must accommodate multiple call volume. VRI can initiate service with one workstation.
Emergency Power Requirements 47 C.F.R. § 64.604(b)(4)	Yes	No	Per FCC TRS Regulations.
Telephone Network 47 C.F.R. § 64.603	Yes	No	Outbound calls are made on POTS lines. Also, Voice Initiated Calls are received by phone. Note that currently, technology does not exist for providing voice initiated calls via VRS, and must be developed to comply with TRS regulations.

VRS Platform/Database 47 C.F.R. § 64.604(c)(5)(ii) 47 C.F.R. § 64.604(c)(5)(iii)(C) 47 C.F.R. § 64.604(c)(5)(iii)(E) 47 C.F.R. § 64.604(c)(5)(iii)(H)	Yes	No	Required of VRS by Telecoms for reporting purposes.
Video Codec Research and Development 47 C.F.R. § 64.604(c)(5)	Yes	No	VRS must accommodate all callers, despite low bandwidth. NetMeeting is not satisfactory to users.
Customized Software 47 C.F.R. § 64.604(c)(5)(ii) 47 C.F.R. § 64.604(c)(5)(iii)(C) 47 C.F.R. § 64.604(c)(5)(iii)(E) 47 C.F.R. § 64.604(c)(5)(iii)(H)	Yes	No	VRI = off-the-shelf programs. FCC requires complex reporting and data capture.
Software Engineers	Yes	No	See Network Engineer comments.
Extensive Software Investment 47 C.F.R. § 64.604(b)(2)	Yes	No	VRS must accommodate call volume. VRI can use off-the-shelf components, and initiate service with one workstation, thus requiring fewer software licenses, etc.
Limited Equipment Cost	No	Yes	VRI requires a simple “point-to-point” video program. VRI can elect to limit provision of service. VRS must accept calls from any point of origination, including ISDN or IP lines, Mac or PC computers, videophones, or set-top videoconferencing devices.
Secure Call Center	Yes	No	Per FCC TRS Regulations, service must be provided from a secure location.
Call Center Management 47 C.F.R. § 64.604(c)(5)(iii)(H)	Yes	No	Per FCC TRS Regulations. Secured call center requires Management for daily operations.
Full-time Trainer(s) 47 C.F.R. § 64.604(a)(1) 47 C.F.R. § 64.604(a)(2)(ii)	Yes	No	Per FCC TRS Regulations, VRS must offer standardized service, functionally equivalent to a phone call. This requires training.
Standardized Policies and Procedures 47 C.F.R. § 64.604(a)(3)	Yes	No	Per FCC TRS Regulations, VRS must offer standardized service, functionally equivalent to a phone call.
Customer Service Organization and Database 47 C.F.R. § 64.604(c)(1)(i) 47 C.F.R. § 64.604(c)(1)(ii) 47 C.F.R. § 64.604(c)(2)(i) 47 C.F.R. § 64.604(c)(2)(ii)	Yes	No	VRI is not regulated. Telecoms require customer service function from VRS.

Coverage for Potentially Unlimited Volume 47 C.F.R. § 64.604(b)(2) 47 C.F.R. § 64.604(b)(4)	Yes	No	VRS is required to forecast and provide coverage for call volume.
ASA Requirements 47 C.F.R. § 64.604(b)(2) 47 C.F.R. § 64.604(b)(4)	Yes	No	Per FCC TRS Regulations, must have sufficient staff to provide less than 10 second wait time for 85% of calls received. Failure to comply results in \$1000/day imposed fines.
Complex Reporting and Billing 47 C.F.R. § 64.604(c)(5)(ii) 47 C.F.R. § 64.604(c)(5)(iii)(C) 47 C.F.R. § 64.604(c)(5)(iii)(E) 47 C.F.R. § 64.604(c)(5)(iii)(H)	Yes	No	FCC requires extensive reporting features.
Certified/Qualified Interpreters 47 C.F.R. § 64.604(a)	Yes	No	Per FCC VRS Regulations. VRI is not regulated. This is desirable but not required for VRI.
Discrimination in Accepting Interpreting Assignments 47 C.F.R. § 64.604(a)(1)	No	Yes	VRI allows for discrimination in acceptance of interpreting assignments and placement according to skill level. VRS interpreters must ALL have a level of competence to handle any call that is received with no advance notice of the subject matter or signing styles involved. This requires many years of experience to acquire the depth of skill necessary, which translates into higher costs for such skills, and higher costs for recruitment.
Personnel/Legal Consultation for Compliance with FCC Regulations	Yes	No	VRS requires working with the FCC, incurring legal costs and expenses.
Contract Negotiations 47 C.F.R. § 64.604(f)(2)	Yes	No	VRS providers must either contract with entities authorized to bill the TRS fund or obtain or contract with certified state programs, either one creating additional administrative costs.

ADDITIONAL ATTACHMENTS DELETED AS CONFIDENTIAL